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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

SH PARTNERS SANTA MONICA,

Plaintiff and Respondent,

v.

ADVENTURE TRAINING
CONSULTANTS et al.,

Defendants and Appellants.

B203380

(Los Angeles County
Super. Ct. No. BC347774)

APPEAL from a judgment of the Superior Court of Los Angeles County.
Kenneth Freeman, Judge. Affirmed.

Craig Mordoh for Defendant and Appellant James Wark.

Ryan & Associates and Wayne Bennett Brosman for Plaintiff and Respondent SH
Partners Santa Monica.

James Wark appeals from a judgment holding him liable, as a guarantor, to pay the past due rent of Adventure Training Consultants doing business as Zen Bo. We affirm.

FACTS

In 2002, Adventure Training Consultants (Adventure) entered into a lease agreement with Dial Associates, LLC to rent office space in a Santa Monica building. Over time, Adventure fell behind in its rent payments and the parties negotiated a modification of the lease. Wark signed guaranties for both the original lease and the modification. Adventure continued to be delinquent, however, and on June 13, 2005, SH Partners Santa Monica, LLC (SH Partners), Dial Associates' successor-in-interest, served Adventure with a 3-day notice to pay rent or quit. SH Partners then brought an unlawful detainer action against Adventure on June 29, 2005, seeking past-due rent of \$34,336.73 or possession of the premises plus reasonable attorney fees, forfeiture of the agreement, and damages. On July 28, 2005, the parties entered into a stipulated judgment whereby SH Partners retained the \$6,000 security deposit and took possession of the premises. The parties also agreed to cancellation of the rental agreement, and forfeiture of the lease.

On February 22, 2006, SH Partners brought the present action against Adventure and Wark for breach of contract and breach of written guaranty, seeking, among other things, \$115,725.88 in compensatory damages for past due rent, brokerage commissions, late charges and returned check fees. A default was entered against Adventure on December 19, 2006. Wark answered and a bench trial was held on April 25, 2007. Thereafter, the trial court entered judgment in favor of SH Partners, holding Wark and Adventure "jointly and severally [liable] for the principal amount of \$91,410.65 and prejudgment interest of \$48,469.27." Wark timely appealed.

DISCUSSION

Wark makes three arguments on appeal: (1) the lease guaranty was superceded by the stipulated judgment in the unlawful detainer action because SH Partners waived its right to recover the unpaid rent when it agreed to retain the \$6,000 security deposit; (2) the judgment entered in the unlawful detainer action is res judicata as to Adventure,

and by implication, Wark; and (3) there was no evidence in the record to support the amount of the judgment. We find no merit to Wark's arguments.

A. Waiver

The primary question presented by Wark's appeal is whether the stipulated judgment in the unlawful detainer action resolved the issue of unpaid rent between the parties. If it did, the stipulated judgment superceded the lease guaranty. According to Wark, retention of the \$6,000 security deposit satisfied SH Partners' entire claim for unpaid rents from Adventure because SH Partners received no past due rent, no holdover damages, no attorneys fees or costs beyond the \$6,000 even though the complaint in the unlawful detainer action sought all of these damages. Wark argues, "A stipulated judgment normally concludes or determines all matters put into issue by the pleadings, unless the parties agree to restrict its scope by expressly withdrawing an issue from that judgment." If the stipulated judgment released Adventure's obligation to pay the overdue rent, it also released Wark's obligation to perform on the guaranty.

Wark's argument is premised on the assumption that SH Partners "waived the balance of the rent and damages sought in the Unlawful Detainer complaint" by entering into the stipulated judgment. This requires interpretation of the parties' stipulated judgment. (*Landeros v. Pankey* (1995) 39 Cal.App.4th 1167, 1172.) The interpretation of a written instrument is essentially a judicial function to be exercised according to the generally accepted canons of interpretation so that the purposes of the instrument may be given effect. (*Parsons v. Bristol Development Co.* (1965) 62 Cal.2d 861, 865; *In re Marriage of Smith* (2007) 148 Cal.App.4th 1115, 1121.) Unless interpretation turns upon the credibility of extrinsic evidence, an appellate court is not bound by the trial court's construction but makes an independent determination of the meaning of the writing. (*In re Marriage of Smith, supra*, 148 Cal.App.4th at p. 1121; see *Lucas v. Elliott* (1992) 3 Cal.App.4th 888, 892.) We believe our review is for substantial evidence, as the trial court heard testimony from the property manager of the building which supports its conclusion.

In *Landeros v. Pankey*, *supra*, 39 Cal.App.4th at page 1169, our colleagues in Division Four were presented with a case that “illustrates that settling an unlawful detainer action does not necessarily settle all disputes arising from a residential landlord-tenant relationship and that, in order to assure finality of litigation, the settlement documents must be comprehensive.” There, the tenants entered into a stipulated judgment in an unlawful detainer action with the landlords to vacate the property. Eight months after the judgment, the tenants sued the landlords for damages for breach of warranty of habitability, alleging vermin infestations, a leaking roof, exposed wiring, and nonworking plumbing. (*Id.* at pp. 1169-1170.) A demurrer was sustained against the tenant’s complaint on the ground of collateral estoppel; the landlords successfully argued the tenant’s action was barred by the prior unlawful detainer judgment because warranty of habitability was raised as an affirmative defense in the prior action. (*Ibid.*) Because there was no evidence that the issue of habitability was litigated and determined and the stipulated judgment contained no language of comprehensive settlement of all matters between the parties arising from the lease, the tenants were not collaterally estopped from bringing their action. (*Id.* at p. 1174.)

Similarly, there is no evidence in the record that the issue of unpaid rent was resolved in the prior unlawful detainer action. Indeed, the stipulated judgment is silent as to the claim for unpaid rent—the “past due rent” section on the form stipulated judgment is left blank. As in *Landeros*, “the stipulated judgment contains no language of comprehensive settlement, no releases of all claims, no waivers under Civil Code section 1542 typically found in settlement documents[,] . . . we are compelled to conclude that the prior judgment, arrived at by stipulation with no issues actually litigated, does not preclude the present action, because the face of the judgment does not show the parties so intended.” (*Landeros v. Pankey*, *supra*, 39 Cal.App.4th at p. 1174.) Moreover, the property manager testified she was never informed by counsel or the manager that the deposit of the \$6,000 was to be held in lieu of rent under the stipulated judgment. Further, she did not apply the \$6,000 security deposit to close out Adventure’s overdue rent account and continued to send invoices to Adventure after the stipulated judgment.

Leaving aside whether a release of Adventure’s obligation also releases Wark’s obligation to perform on the guaranty, we conclude substantial evidence supports the trial court’s conclusion that the parties did not intend for SH Partners to waive its right to seek payment for the overdue rent by entering into the stipulated judgment.¹

B. Res Judicata

A related question presented by Wark’s appeal is whether the unpaid rent issue should have been resolved in the unlawful detainer action because it was necessary to the judgment. Wark suggests the stipulated judgment should be given a res judicata effect on “all issues which were or *could have been* raised in the original suit.” (*Gates v. Superior Court* (1986) 178 Cal.App.3d 301, 311, italics added.)² The burden of establishing preclusion under the doctrine of res judicata rests squarely on the party asserting it. (*Vella v. Hudgins* (1977) 20 Cal.3d 251, 257; *Ferraro v. Camarlinghi* (2008) 161 Cal.App.4th 509, 529.) While rental damages may be included in an unlawful detainer action, it is not required to be included and a landlord may instead choose to litigate his rental claims in a separate civil proceeding. (*Northrop Corp. v. Chaparral Energy, Inc.* (1985) 168 Cal.App.3d 725, 729.) Because the unpaid rent claim was not required to be litigated in the prior unlawful detainer action, it is not necessary to the stipulated judgment and res judicata does not preclude this action.

C. Substantial Evidence

Wark also contends SH Partners “failed to produce any evidence in the record to support the amounts sought and awarded. [¶] While Exhibit 1 was entered into evidence, it simply represents the claims of [SH Partners].” Contrary to Wark’s assertion, Exhibit

¹ We note that our conclusion would be the same even if the de novo standard of review were applicable.

² Wark also argues res judicata applies because the unpaid rent claim was necessarily resolved by the stipulated judgment since it was raised in SH Partners’ complaint. “As a matter of law the judgment in the Unlawful Detainer [judgment] resolved those issues and [they] cannot be relitigated in the instant action.” As we have already discussed, the issue of unpaid rent was not resolved by the stipulated judgment.

1, the tenant ledger for Adventure maintained by the property manager, details the date of the delinquent charges against Adventure, the amount of the charges, and a description of the charges culled from the property manager's accounting system. Wark had ample opportunity to cross-examine the custodian of record on what exactly was contained in Exhibit 1. That is sufficient evidence to support the judgment award.

Finally, Wark argues, "there [is] no evidence in the record to support the contention that Respondent was in fact the successor in interest to Dial Associates, LLC, which signed the Lease and the Modification, and was therefore a proper party." We do not find this argument persuasive. The record shows SH Partners to be the only entity pursuing any claims relating to the lease and modification. It brought the unlawful detainer action against Adventure and entered into the stipulated judgment. It held and retained the security deposit provided under the lease. The trial court reasonably could conclude SH Partners were entitled to demand the payment of the rent from Adventure and Wark. There appears to be no danger of multiple lawsuits seeking duplicative recoveries. (*PM Group, Inc. v. Stewart* (2007) 154 Cal.App.4th 55, 66.)

DISPOSITION

The judgment is affirmed. Respondent is to recover its costs on appeal.

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BIGELOW, J.

We concur:

COOPER, P. J.

RUBIN, J.